

# Competition Law Insights

## Restrictions on Dealers: CCI's prima facie view in a case against Honda Scooters

1. After assessing the competition law validity of restrictions imposed by car manufacturers on their dealers in multiple cases, the Competition Commission of India (CCI) is currently examining similar issues in the two-wheeler industry.

2. A dealer of Honda Motorcycle and Scooter India Private Limited (**Honda**) filed a complaint (information) alleging that some of the restrictions imposed by Honda on its motorcycle and scooter dealers violate certain provisions of the Competition Act, 2002 (**Competition Act**).

3. Based on the information provided by the dealer, the CCI formed a prima facie opinion that Honda violated Section 4 and Section 3(4) of the Competition Act and passed an order under Section 26(1) directing the Director General to conduct a detailed investigation into the business practices of Honda, especially in relation to the restrictions imposed by Honda on its dealers. Section 4 relates to an abuse of its dominant position by an enterprise and Section 3 (4) relates to an anti-competitive vertical agreement (agreement between Honda and its dealers, in this case).

4. The CCI in its prima facie order held that the following practices of Honda vis-à-vis its dealers may result in a violation of the provisions of the Competition Act:

- a) Restriction on dealers to procure certain ancillary products only from designated suppliers. These products include, oil & lubricants, batteries, accessories, annual maintenance contracts (**AMC**), extended warranties (**EW**), road side assistance (**RSA**), advertising services, and insurance & financial services.
- b) Mandatory requirement to purchase slow-moving models and merchandise items, such as, caps and bags.
- c) Compulsory deduction of advertising charges from dealer's account.
- d) Restriction on dealers' ability to decide the minimum price at which they can sell Honda's products, putting a discount control mechanism in place and penalising dealers for offering additional discounts.
- e) Restriction on the dealer from selling outside its designated territory.

Please find below a summary of the observations made by the CCI in its prima facie order:

### I. ABUSE OF DOMINANCE UNDER SECTION 4

5. To determine if Honda has abused its dominant position, the CCI examined the definition of the relevant market, dominance of Honda in that relevant market and the abusive conduct of Honda.

#### A. Relevant market:

6. Scooters and motorcycles could not be regarded as substitutable and are different in terms of: (i) their characteristics such as speed, mileage, appearance; and (ii) tastes and preferences of consumers – younger generation prefers motorcycles whereas older generation prefers scooters. Conditions of competition for sale of scooters and motorcycle were the same across India.

7. Based on these factors, the CCI identified the following relevant markets:

- a) Market for manufacture and sale of motorcycles in India; and
- b) Market for manufacture and sale of scooters in India.

#### B. Dominant Position of Honda:

8. The CCI considered the following factors in determining if Honda was in a dominant position in any of the identified relevant markets:

- a) Market shares (based on 'Industrial Outlook and CMIE' database: FY 2010-11 to FY 2016-17):

9. **Motorcycles:** Hero was the leading player with a market share of 44.43% – 48.39%. Bajaj Auto was the second largest player. Honda's market share was in the range of 7.14% – 12.63% and it could not be considered to be in a dominant position.

10. **Scooters:** Honda was consistently the leading player with a market share of 43.3% – 56.82%. In FY 2013-14, Honda's market share was four times that of TVS, the second largest player. The market share of TVS was in the range of 21.44% – 14.76%.

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### b) High entry barriers:

11. A huge capital cost was involved in setting up a facility for manufacturing scooters which acted as a barrier for a new player to enter the market.

12. Based on these factors, the CCI, *prima facie*, held that Honda was in a dominant position in the market for the manufacture and sale of scooters in India.

### C. Abusive conduct of Honda:

13. The CCI observed that the following conditions imposed by Honda on their dealers could be considered as abusive:

a) Lubricants: Dealers were restricted to purchasing oils and lubricants from only two vendors selected by Honda. The prices at which these dealers sold lubricants were higher than the market prices.

b) Batteries: Dealers were restricted to using batteries of only two brands selected by Honda. If any dealer was found to have dealt with any other brand, he was given a negative assessment score which ultimately became a ground for termination.

c) Genuine accessories: Certain accessories were classified as 'genuine' without any basis and dealers were restricted from selling non-genuine accessories. Genuine accessories were more expensive than other accessories available in the market and had nothing to do with the operation of a vehicle.

d) AMC, EW and RSA: These services were made available at a higher price and the dealer was not allowed to offer these at a lower price.

e) Advertising charges: Honda compulsorily deducted advertising charges from its dealers which were calculated based on the number of dispatches to such dealers during a particular period of time. Dealers were required to deal with only one advertising agency selected by Honda.

f) Merchandise items: Dealers were forced to purchase merchandise items such as caps, bags and t-shirts which had nothing to do with the sale of a vehicle.

g) Slow-moving models: Dealers were forced to accept slow moving models – which were billed to their accounts. A dealer was forced to accept all vehicles dispatched to it.

14. *Threat to terminate:* If any of the above conditions were not complied with by a dealer, Honda threatened the dealer with cancellation of its dealership and confiscation of its security deposit.

### II. VERTICAL RESTRICTIONS UNDER SECTION 3(4):

15. The CCI *prima facie* found the following restrictions imposed by Honda on its dealers to be a violation of Section 3(4) of the Competition Act:

a) Oil, lubricants/ batteries/ accessories/ merchandise/ insurance/ finance services: Restriction on procuring these items only from sources selected by Honda were held to be in the nature of exclusive supply and refusal to deal. The CCI observed that such restrictions would lead to an increase in prices, limit consumer choice, create entry barriers and could cause an appreciable adverse effect on competition (AAEC).

b) Advertising services: The arrangement wherein advertising costs were directly debited from the dealer's account based on dispatches were held to be in the nature of tie-in. Restriction on availing advertising services only from one agency were held to be in the nature of exclusive supply and refusal to deal. The CCI observed that such restrictions could create entry barriers for other advertising agencies.

c) AMC/ EW/ RSA: The condition that customers of these services should necessarily buy booklets issued by Corporate India Warranties were found to be in the nature of a tie-in arrangement and could result in an AAEC.

d) Resale Price Maintenance (RPM): Honda imposes restrictions on the maximum discount which can be offered to customers by the dealer. Based on an email from Honda, it appeared that there is a discount control mechanism involving a mystery shopping agency employed by Honda. In case a dealer offered extra discounts, Honda threatened such a dealer with a financial penalty and interruption in its dispatches. These restrictions were held to be in

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the nature of RPM which could foreclose intra-brand competition, result in price increases and would not accrue any benefit to consumers.

e) Territorial restrictions: Dealers were required not to sell outside their designated territory. Such a restriction impacted the intra-brand competition and created entry barriers. Given that Honda was held to be dominant, such restrictions could cause an AAEC.

16. Single branding: Honda imposed a restriction on its dealers to take prior written consent if they desired to sell products of a competing brand. However, the CCI observed that a prior permission requirement would not result in a violation of Section 3(4) unless there was material to suggest de facto exclu-

sivity, which was not the case.

17. Although the CCI is yet to pass a final order in the matter, certain media reports confirmed that the Director General had completed its investigation and found Honda to be in violation of the provisions of the Competition Act in the investigation report submitted to the CCI.

18. In the past, the CCI has imposed penalties on various car companies for imposing restrictions on their dealers. It is, therefore, important for OEMs (original equipment manufacturers) to carefully review their Dealer and Distributor Agreements and ensure that conditions imposed on dealers/ distributors do not breach the provisions of the Competition Act.

**For any further questions or advise on competition law in India, please feel free to reach out to our competition law partner at [vivek.agarwal@dumeds.com](mailto:vivek.agarwal@dumeds.com)**



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